

complete DA Form 5492-R (Precomplaint Counseling Data Sheet) and appropriate portions of DA Form 5493-R (Individual Complaint Data Sheet). The DA Form 5492-R will be prepared for each reportable contact at the time the Notice of Final Interview is issued. These documents will be submitted to the EEO officer along with his or her report. DA Form 5492-R and DA Form 5493-R will be reproduced locally on 8 1/2- by 11-inch paper.

(e) All Army personnel will fully cooperate with and support the EEO counselor in the performance of his or her duties under this regulation. The EEO counselor will be free from restraint, interference, harassment, coercion, discrimination, or reprisal in connection with the performance of his or her duties.

§ 588.14 Filing a formal complaint.

(a) A formal complaint must be filed within 15 calendar days after the date of receipt of the notice of final interview with the EEO counselor. The formal complaint must be filed in writing by the complainant. If vague or general allegations are contained in the complaint, the complainant will be given an opportunity to provide specific information that will clearly define the issues. If specific information is not provided, the vague or general allegations of the complaint will be canceled for failure to prosecute.

(b) Complaints should be submitted on DA Form 2590-R (Formal Complaint of Discrimination). Complaints submitted in letter form, while not preferred, will be accepted if they meet the other requirements of this regulation. However, in this situation, the EEO officer will complete a DA Form 2590-R and attach it to the letter. DA Form 2590-R will be reproduced locally on 8 1/2- by 11-inch paper. A copy of DA Form 2590-R is located at the back of this regulation.

(c) Persons to whom complaints may be submitted are as follows:

(1) A formal complaint may be submitted to the Army official listed below:

- (i) Activity EEO officer.
- (ii) Activity Commander.
- (iii) Federal Woman's Program Manager.

(iv) Director of Equal Employment Opportunity.

(v) Secretary of the Army.

(2) All activity publication will request the complainant to submit a copy of his or her complaint to the activity EEO officer regardless with whom it is filed. Anyone other than the activity EEO officer who receives a complaint will immediately transmit the complaint to the activity EEO officer, indicating the date of receipt of the complaint if it is not postmarked. EEO counselors should encourage aggrieved persons to submit their complaints to the activity EEO officer to assure timely processing.

(3) A formal complaint is deemed filed on the date that it is postmarked or, if there is no postmark, on the date it is received by one of the officials listed in c(1) above. The activity EEO officer will acknowledge receipt of the formal complaint in writing. (See appendix G.)

(4) Upon receipt of the formal complaint, the EEO officer will indicate the MACOM against which the complaint is filed, code the matters giving rise to the complaint, ensure the DA Form 2590-R is completed, and immediately submit one copy of the completed DA Form 2590-R to EEOCRA.

§ 588.15 Criteria for acceptance.

(a) A complaint will be accepted by the EEO officer (subject to final decision by the Secretary of the Army or his or her designee) unless the complaint contains one or more of the following:

(1) Refers to a situation over which the Army has no jurisdiction.

(2) Is not based on the complainant's race, color, religion, sex, age, national origin, physical or mental handicap, and/or reprisal. Complaints of discrimination because of age are accepted only if the complaint was at least 40 years of age when the action complained of occurred.

(3) Sets forth matters identical to those in a previous complaint filed by the same complainant and which has been, or is being, processed.

(4) Sets forth matters identical to those in a grievance filed in writing by the same complainant under a negotiated grievance procedure.

(5) Sets forth matters which also form the basis of an appeal filed before the MSPB by the same complainant.

(6) Is untimely.

(i) The matters in a complaint must have been brought to the attention of an EEO counselor within 30 calendar days after the incident, effective date of a personnel action, or the date the aggrieved person became aware of reasonably should have been aware, of the discriminatory event of personnel action.

(ii) Formal complaints must be filed within 15 calendar days after receipt of the Notice of Final Interview.

(iii) The Activity Commander or his or her EEO officer will waive the time limits of this paragraph if the complainant can show either—

(A) That he or she was not notified of the time limits and was not otherwise aware of them.

(B) That he or she was prevented by circumstances beyond his or her control from submitting the matter within the time limits of this section.

(C) The time limits of this paragraph may be waived for reasons deemed sufficient at the discretion of the Activity Commander or his or her designee.

(D) The letter accepting the complaint will state the specific basis for any waiver of time limits.

(b) The Secretary of the Army or his or her designee reserves the right to reject a complaint previously accepted by an EEO officer when making the final Army decision on the Basis of one or more of the grounds specified in a above.

§ 588.16 Acceptance and rejection of formal complaints.

(a) As soon as the EEO officer accepts a formal complaint, he or she will give a copy of the EEO counselor's written report on the precomplaint counseling to the complainant. The original report will be kept in the complaint file.

(b) The EEO officer will review the complaint against the criteria of § 588.15 and determine which allegations should be accepted or rejected. The EEO officer will ensure that the complainant was informally counseled on each matter accepted in the formal complaint.

(1) The EEO officer may ask the complainant to give more specifics on allegations or meet with the EEO counselor on a matter not previously discussed in the precomplaint counseling.

(2) The EEO officer may cancel a complaint for failure of the complainant to prosecute his or her complaint if the complainant does not provide the needed information to the EEO officer in the time specified.

(c) The EEO officer will decide whether to accept or reject a complaint in whole or in part. When appropriate, the EEO officer will coordinate acceptance or rejection of a complaint with the labor counselor. The acceptance of any complaint shall always be conditioned upon the final decision of the Secretary of the Army or his or her designee in accord with § 588.15(b).

(d) The EEO officer will provide the complainant and his or her representative, if any, a written decision within 5 calendar days after the complaint is received. The decision will be either hand-delivered to the complainant or sent by certified mail. The complainant must acknowledge receipt of the decision in writing. The decision must specify which allegations or parts of a complaint were accepted and explain the grounds for any rejection or cancellation. The decision will also advise the complainant of the right to appeal the rejections or cancellations.

(e) If a complaint has been rejected in whole or in part, the EEO officer will process the closure in accord with § 588.69(b). The case file will be retained by the EEO officer for 2 years from the date of the final Army decision or until all administrative and judicial appeals are exhausted, whichever is longer.

(f) If any part of a complaint is accepted by the EEO officer, a copy of the complaint will be sent directly to the appropriate USACARA Regional office by the EEO officer requesting the assignment of an investigator and citing applicable funds for payment of travel and per diem. As indicated in § 588.17 the transmittal letter will identify the part(s) of the complaint which have been accepted for investigation.

(g) Immediately upon acceptance of a formal complaint, the Activity Commander should designate the activity